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Division Bench (Criminal)
समक्ष: माननीय उच्च न्यायालय कबलपुर(मपु०)

अपराधिक प्रकरण अपील क्रमांक:---580---/९९

लखनलाल पिता धनसाय धोबी, उम्र लगभग ३० वर्ष
निवासी-दुधपारा विघोली चौकी, धाना-उरगा,
धाना-कोरबा, तह० कोरबा, जिला कोरबा(मपु०)

अपीलाधी/अभियुक्त
(बेल में)

विरुद्ध

मध्यमदेश शासन ---उत्तरदाता

Pl. A. R.

दाणिहक अपील अन्तर्गत धारा ३७४(२) दं०पु०सी० १९७३

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HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH : HON'BLE SHRI FAKHRUDDIN AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 580 OF 1999

Appellant : Lakhanlal

Versus

Respondent : State of Madhya Pradesh

Present : Shri Ramkrishna Sharma, learned counsel for the appellant.
Shri Akhil Agrawal, learned Panel Lawyer for State/respondent.

ORAL JUDGMENT
(Delivered on 07th of August, 2006)

Per Dhirendra Mishra, J.

The instant appeal is directed against the impugned judgment dated 07-01-1999 passed by Additional Sessions Judge, Korba in Sessions Trial No. 464/97, by which after holding the appellant guilty for causing death of his father namely Dhansai, he has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

2. Case of the prosecution in brief is that complainant Nathuram (PW-3) lodged the report on 10.07.1997 at about 17.30 hours in Police Station – Korba, Outpost – Urga, informing that at about 3.00 p.m. on that date deceased Dhansai borrowed crowbar from his house and was erecting support in his kitchen garden. At that time his son namely Lakhanlal came there and started assaulting his father Dhansai by lathi

whereupon Dhansai ran towards his kitchen garden and fell on the ground. However, Lakhanlal continued assaulting Dhansai with club, he shouted and caught hold of the club of Lakhan whereupon Lakhan also pushed him. Wife of Dhansai namely Pisodhin was also there. However, when nobody came even after raising shouts, he went Devlappar and narrated the incident to Kotwar Mohanlal Chouhan. They returned to the place of incident along with other villagers and found that the deceased was drenched with blood having various injuries over his person and he was already dead. On the basis of the above report offence under Section 302 of the Indian Penal Code was registered by the police (Ex.P/4). The merg intimation was registered under Ex.P/5. The police proceeded for the place of occurrence and prepared the Panchanama in the presence of the witnesses vide Ex.P/7. The body was sent for autopsy to Primary Health Centre, Korba where Dr. P.S. Sisodiya (PW-1) conducted postmortem over the dead body of Dhansai and submitted his report of Ex.P/2. On the memorandum of Ex.P/12 of the accused the weapon of offence i.e. club was seized from his house vide seizure memo of Ex.P/13. Bloodstained and plain soil was taken into possession from the place of incident vide Exs.P/8 and P/9. A sealed packet containing bloodstained clothing of the deceased was seized vide Ex.P/10. Spot map of Ex.P/14 was got prepared. Site plan of Ex.P/17 was got prepared by Halka Patwari. Seized articles were sent for chemical examination to the Forensic Science Laboratory, Sagar from where report of Ex.P/19 was received. After completing the investigation charge sheet was filed in the Court of Judicial Magistrate First Class who in turn committed the case to the Court of Sessions Judge, Bilaspur and the same was received on transfer for trial by the learned

Additional Sessions Judge. Charges under Section 302 of the Indian Penal Code was framed against the appellant who abjured his guilt.

3. Prosecution in order to establish the charge against the appellant examined 11 witnesses in all. Thereafter, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him and pleaded his innocence and false implication in the crime. However, the learned trial Court after hearing learned counsel for the accused/appellant and learned Additional Public Prosecutor for the State, convicted and sentenced the accused/appellant as mentioned above.
4. Homicidal death of deceased Dhansai is not in dispute. Even otherwise considering of the statement of Dr. Sisodiya (PW-1) who conducted postmortem over the body of the deceased and submitted his report of Ex.P/2 in which he noticed the injuries described below and opined that the cause of death was coma and shock due to injury over the body of the deceased, homicidal death of Dhansai is established.
 - 1) Lacerated wound 5 x 1 cm bone deep over left parietal region, bloodstain present;
 - 2) Fracture of left temporal bone, clots present.
Sub dural haematoma of first size present;
 - 3) Compound fracture of right elbow (both radius and ulna) and lacerated wound 3 x 1 x 1 cm;
 - 4) Lacerated wound 3 x 2 x 1 cm over left forearm;
 - 5) Compound fracture over left radius and ulna (shaft);
 - 6) Whole chest up to xiphisternum compressed and fracture of 4th, 5th, 6th and 7th rib (both side);
 - 7) Abrasion 3 x 1 cm above xiphisternum;

- 8) Two abrasions 2 x 1 cm just beside above abrasion;
- 9) Abrasion 2 x 1 cm on the left side of neck.

- 5. Learned counsel for the appellant submits that there is a discrepancy in the statements of the alleged eyewitnesses namely Punaibai @ Pisodhin (PW-2) and Nathuram (PW-3) and the Court below ought to have disbelieved the eyewitness account given by these witnesses on the basis of discrepancy in their statements. However, the Court below relying upon the statements of these witnesses has convicted the appellant, which cannot be sustained. It is further argued that though the seized club was sent to the Serologist for confirmation of the origin of the blood group but the report of the Serologist is negative as the Serologist has not categorically opined that the weapon of offence contained human blood.
- 6. On the other hand, learned counsel for the State/respondent supported the impugned judgment of the trial Court.
- 7. We have heard learned counsel for the respective parties and perused the material available on record including the impugned judgment of the trial Court.
- 8. So far as the question of involvement of the appellant in crime in question is concerned, the conviction is based on the statements of eyewitnesses Nathuram (PW-3), the complainant and Pisodhinbai (PW-2), mother of the appellant. PW-3 Nathuram has stated that on the date and at the time of incident he was in his house. His house is adjacent to the house of elder brother of the appellant. At that time father of the appellant came to his house, took crowbar and was



digging his kitchen garden and Lakhan also went there. Lakhan started assaulting his father and took him towards his kitchen garden. He was assaulting him with lathi. Dhansai was shouting that he is going to kill him and thereafter he fell down in his kitchen garden. After hearing the shouts he came out of his house and caught hold of lathi of Lakhan whereupon Lakhan pushed him also and he fell on the ground. The mother of Lakhan was also in the house, she came out of the house and started running. Why she ran he did not know. Thereafter, he went to call Kotwar and other villagers shouting that Lakhan is going to kill his father. After hearing the shouts the villagers came there including the Kotwar and Loharik. He has further stated that there were numerous injuries over the person of Dhansai. After the incident he went to the police station with Kotwar and lodged the report of Ex.P/4. In the cross examination of this witness the defence has not been able to elicit anything which makes the statement of this witness untrustworthy or unreliable. PW-2 Punaibai @ Pisodhinbai who is none else than the mother of the appellant has also stated that she has three sons and three daughters and Lakhan is her second son who is present in the Court. Partition has been effected in her family and after partition her husband Dhansai was residing with her younger son namely Makhan. The accused was residing separately. The partition was effected some 15 or 20 years back. However, Lakhan asked for partition from his father. In the Panchayat her husband did not give partition to Lakhan but gave partition to Makhan and on this account there was a quarrel between Lakhan and her husband Dhansai. The cow of Lakhan had entered into the kitchen garden of old man (Dhansai) whereupon the old man threatened Lakhan that in case his cow enters into his kitchen garden, he will take his cow to cattle pound.

Hearing this Lakhan came out of his house. At that time her husband was holding crowbar and Lakhan was holding club. The old man started running and she also started running thinking that the old man was coming with crowbar towards her and out of fear she went inside water. Thereafter, she did not see the incident between her husband and her son Lakhan. Thus, we see that the statement of Nathuram who is the eyewitness of the incident from inception till end, is duly corroborated in material particulars by the statement of PW-2 Punaibai @ Pisodhinbai. The statement of PW-3 Nathuram who is an independent eyewitness is further corroborated by the statement of Dr. Sisodhiya (PW-1) who performed autopsy and found the corresponding injuries over the dead body of Dhansai. The statement of this witness is also corroborated by the First Information Report of Ex.P/4 wherein the incident has been described in detail. Moreover, the clubs seized from the appellant was sent to the Forensic Science Laboratory and as per the report of F.S.L. blood has been found on the said club.

9. On the basis of above, we are of the considered opinion that the Court below has not committed any illegality or infirmity by relying upon the statement of PW-3 Nathuram for reaching to the conclusion that the appellant was in fact the author of the crime and was responsible for causing death of his father Dhansai.
10. In the result, the appeal being devoid of substance deserves to be dismissed and is accordingly dismissed.

**Sd/-
Fakhruddin
Judge**

**Sd/-
DHIRENDRA MISHRA
Judge**

Khan